

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

November 13, 2013

STATE MAIL – N440

Phyllis Drummond
SBI No. 002
Baylor Women's Correctional Institution
660 Baylor Boulevard
New Castle, DE 19720

***RE: State of Delaware v. Phyllis Drummond
Def. ID No. 0311018699A***

Date Submitted: August 26, 2013

Dear Ms. Drummond:

This is my decision on your eighth Motion for Postconviction Relief and your Motion for Appointment of Counsel. You were convicted of Robbery in the First Degree and Wearing a Disguise During the Commission of a Felony. The convictions arose out of your robbery of the Wilmington Trust Bank in Millsboro, Delaware on November 22, 2003. The Supreme Court affirmed your convictions on August 24, 2005.¹ You were represented by Carole J. Dunn, Esquire at trial. The State was

¹ *Drummond v. State of Delaware*, 882 A.2d 761, 2005 WL 2475715 (Del. Aug. 24, 2005)(Table).

represented by Deputy Attorney General Peggy Marshall, Esquire at trial.

I. Appointment of Counsel

You want the Court to appoint counsel to pursue your Motion for Postconviction Relief. You argue that the May 6, 2013 amendment to Superior Court Criminal Rule 61, which was prompted by United States Supreme Court's decision in *Martinez v. Ryan*,² constitutionally entitles you to the appointment of counsel to pursue your claims of ineffective assistance of counsel. First, your reliance on *Martinez* is misplaced. *Martinez* permits a federal court to review a "substantial" ineffective assistance of counsel claim on federal habeas review.³ The United States Supreme Court stated that its decision did not establish a constitutional right to counsel in state postconviction proceedings.⁴ Second, the amendment to Rule 61 allowing for the appointment of counsel for postconviction proceedings applies to an indigent movant's first postconviction proceeding and only applies to motions filed on or after the May 6, 2013 amendment date.⁵ You first filed a motion for postconviction relief on May 24, 2006, and have subsequently filed additional

² 132 S.Ct. 1309 (2012).

³ *State of Delaware v. Terrence L. Jones*, 2013 WL 5372415, at *3 (Del. Super. Sept. 24, 2013) citing *Martinez*, 132 S.Ct. at 1311, 1318-19.

⁴ *Id.* citing *Martinez*, 132 S.Ct. at 1315.

⁵ Superior Court Criminal Rule 61.

motions for postconviction relief on June 13, 2006, February 12, 2007, February 17, 2011, June 12, 2012, March 13, 2013 and July 30, 2013. You filed your current Motion for Postconviction Relief on August 26, 2013. Your current Motion for Postconviction Relief is not your first motion, but your eighth and the Court has clearly stated in its order amending Rule 61 that the amendment is not retroactive.⁶ After examining the record, your previous filings, and the conclusory nature of almost all of your contentions, this Court **DENIES** your Motion for Appointment of Counsel.

II. Motion for Postconviction Relief

You have raised eleven allegations in support of your eighth Motion for Postconviction Relief. All of your allegations focus on ineffective assistance of counsel. You allege that your attorney was ineffective because (1) you were never properly identified, (2) you passed your polygraph examination, (3) the police were allowed to commit perjury, (4) your case was not properly investigated, (5) your attorney instructed you not to testify, (6) your attorney did not object to the all-white jury, (7) your attorney failed to object to the “reasonable doubt” instruction, (8) your attorney ignored the elements of the crimes, (9) your attorney allowed the prosecutor

⁶ See *State v. Roten*, 2013 WL 4744681 (Del. Super. Sept. 3, 2013) and *Holmes v. State*, 67 A.3d 1022, 2013 WL 2297072 (Del. May 23, 2013).

to make misleading statements, (10) your attorney allowed you to have an unfair trial, and (11) your attorney allowed this Court to improperly influence the jury.

Before addressing your allegations, I must first determine whether there are any procedural bars preventing me from considering your allegations.⁷ I find that all of your allegations in your most recent Motion for Postconviction Relief are procedurally barred by Superior Court Criminal Rule 61(i)(1)-(4). While there are exceptions to these procedural bars, you have not alleged any facts that would entitle you to the benefit of those exceptions. Given that you have not raised anything that has not already been exhaustively considered and examined numerous times by this Court and the Supreme Court, there is nothing for me to properly consider.

CONCLUSION

Your eighth Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

cc: Prothonotary
Counsel

⁷ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).